

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014110441

ORDER FOLLOWING PREHEARING  
CONFERENCE OF MARCH 9, 2015

On March 9, 2015, a telephonic prehearing conference was held before Administrative Law Judge Robert Helfand, Office of Administrative Hearings. Tania L. Whiteleather, Attorney at Law, appeared on behalf of Student. Karen E. Gilyard, Attorney at Law, appeared on behalf of the Downey Unified School District. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on March 16-19, 2015 at the District's offices located 11627 Brookshire Avenue, Downey, CA 90241. The hearing shall continue day to day Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 1:30 p.m. on the first day of the hearing and at 9:30 a.m. all other days unless otherwise ordered.

Downey shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum 1) a table for Parents and their representatives; 2) a table for District's legal representative and special education representative; 3) a table for the witness; and 4) a table for the ALJ, near an electrical outlet. Downey shall provide drinking water to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day.

The school district shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 1210 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues<sup>1</sup> at the due process hearing are listed below.

a) Whether Downey failed to provide Student with a free appropriate public education since November 5, 2012 as it provided inappropriate placement, goals, and speech services?

b) Whether Downey has timely reimbursed Student's parents for the cost of an Independent Education Evaluation by Dr. Christine Majors?

Student's proposed resolutions are: (a) Downey to reimburse Student's parents for all costs incurred in providing educational services, including assessments and transportation, since Spring 2014; (b) Downey to reimburse the total cost for the IEE prepared by Dr. Majors; and (c) Downey to increase Student's level of speech and language therapy services according to proof.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties represent that they have served their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

The parties shall meet and confer no later than March 12, 2015, to eliminate any duplicate exhibits

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be

---

<sup>1</sup> Student also alleged in his complaint a third issue, violations of Section 504 of the Rehabilitation Act of 1973 and state civil rights laws. As indicated in Section Seven of this order, this issue has been dismissed.

permitted to call any witnesses not disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by noon on March 12, 2015, as to the schedule of witnesses. The parties shall attempt to reach agreement on a witness list for the first day of hearing. The parties have agreed to coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled. The parties shall submit to OAH at the first day of hearing a list of actual witnesses to be called and the anticipated time for needed to complete each witness's testimony.

The following witnesses will be called to testify by Student; Student's parents; (REDACTED); Representative from Johnson Academy; (REDACTED).

Student has designated (REDACTED) as expert witnesses. Student shall produce to District counsel a copy of the C.V. of each expert witness and any reports or other documents retained by each as to Student, no later than noon on March 12, 2015.

The following witnesses will be called to testify by District: (REDACTED)

The witness schedule will be finalized at the commencement of the due process hearing. The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. The parties shall file with OAH no later than noon on March 13, 2015, a revised witness list which lists those witnesses which will be actually called, the date when the witness will be called, and a time estimate for their expected testimony.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

6. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any

party seeking to present a witness by telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Motions. The ALJ, on his own motion, dismisses Issue Three as OAH is without jurisdiction to hear this issue.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Thus, OAH does not have jurisdiction to entertain Issue Three which is based on alleged violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and/or state civil rights acts..

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

10. Compensatory Education and Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916)263-0880, the OAH ADA Coordinator at [OAHADA@dgs.ca.gov](mailto:OAHADA@dgs.ca.gov) or (916)263-0880 as soon the need is made known. Additional information concerning requests for reasonable accommodations is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accomodations.aspx>.

At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

12. Hearing Closed To the Public. At the request of Student, the hearing shall be closed to public.

13. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

14. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: March 9, 2015

/s/

---

ROBERT HELFAND

Administrative Law Judge

Office of Administrative Hearings